



13.12.2016

**Notice under Section 6 (2) of the Competition Act, 2002 jointly given by Aspen
Pharmacare Holdings Limited and Aspen Global Incorporated**

CORAM:

Mr. Devender Kumar Sikri
Chairperson

Mr. S. L. Bunker
Member

Mr. Sudhir Mital
Member

Mr. Augustine Peter
Member

Mr. U. C. Nahta
Member

Mr. G. P. Mittal
Member

Legal representatives: Khaitan & Co.

Order under Section 31(1) of the Competition Act, 2002

1. On 10.10.2016, the Competition Commission of India (“**Commission**”) received a notice under sub-section (2) of Section 6 of the Competition Act, 2002 (“**Act**”) jointly given by Aspen Pharmacare Holdings Limited (“**APHL**”) and Aspen Global Incorporated (“**AGI**”) (hereinafter AGI and APHL are referred to as the “**Acquirers**”). Both APHL and AGI are part of the Aspen Group. The Acquirers submitted certain documents on 20.10.2016 as per the undertaking filed at the time of giving the notice.



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2016/10/441)



Fair Competition
For Greater Good

2. The notice has been filed pursuant to execution of a Business Sale Agreement (“**BSA**”), among APHL, AGI, and Glaxo Group Limited (“**GGL**”), GlaxoSmithKline Intellectual Property (No. 2) Limited (“**GIPL**”) and GlaxoSmithKline Trading Services Limited (“**GTSL**”) (hereinafter GGL, GIPL and GTSL are referred to as “**GSK entities**”) on 10.09.2016. The proposed combination relates to acquisition of exclusive commercialisation rights in respect of Arixtra and Fraxiparine (“**Target Products**”) brands of GSK entities in India, China, Hong Kong, Macau and Pakistan (“**Retained Markets**”) (“**Proposed Combination**”). The commercialisation rights include the IPR, goodwill, business records, marketing authorisations, contracts, etc. It has been submitted in the notice that the Target Products are injectable anti-coagulants which inhibits blood clot formation.
3. In terms of the provisions of Regulation 14 of the Competition Commission of India (Procedure in regard to the transaction of business relating to Combinations) Regulations, 2011 (“**Combination Regulations**”), *vide* letter dated 11.11.2016, the Acquirers were, *inter alia*, required to provide copy of certain documents, overlaps at molecular level, and information related to other vertically integrated players. The Acquirers, after seeking extension of time, filed their response on 23.11.2016.
4. APHL, incorporated in South Africa, is a global producer of specialty, branded and generic pharmaceuticals. AGI, a company incorporated in Mauritius, is a 100% direct and indirect subsidiary of APHL. It is a holding company for the Aspen Group’s international businesses and manages and maintains the intellectual property rights, regulatory and commercialisation strategy of Aspen Group’s portfolio of specialist and branded products as well as perform procurement and supply related operations. The Acquirers do not directly manufacture or sell any fixed dosage form products in India.
5. GIPL is stated to be engaged in funding research and development activities and licensing of intellectual property rights relating to pharmaceutical products to the GSK Group. GTSL acts as a trading partner for the GSK Group’s pharmaceuticals business as well as manages the supply chain. GGL is a holding company, which through its subsidiaries,



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2016/10/441)



produces pharmaceuticals, sports nutrition and food products for infants. GGL, GIPL and GTSL are subsidiaries of GlaxoSmithKline Plc, which is the ultimate parent company of the GSK Group.

6. On the basis of submissions and subsequent responses of the Acquirers, it is noted that there are two parallel transactions envisaged in the BSA, *i.e.* (i) acquisition of commercialisation rights in respect of Target Products in Retained Markets; and (ii) early termination of an existing collaboration between GSK Group and Aspen in Sub-Saharan Africa (“SSA”) entered into by them in 2009. The Acquirers have submitted that activities conducted pursuant to SSA do not relate to India and no turnover is derived in India in respect of the SSA. Therefore, the SSA collaboration has no jurisdictional nexus to India. With respect to the Proposed Combination, the Acquirers have submitted that they acquired the commercialisation rights of Target Products globally except in Retained Markets, from the GSK entities, by way of Master Asset Purchase Agreement (“MAPA”) dated 30.09.2013. Further, pursuant to MAPA, APHL has also acquired the manufacturing business related to Target Brands and consequently, Aspen Notre-Dame-de-Bondeville (“Aspen NDB”), a wholly owned subsidiary of Aspen Group, got engaged in manufacturing of the Target Brands and thereafter, supplied Target Products to GSK entities for commercialisation in the Retained Markets.
7. The Commission observed that pursuant to MAPA, the Seller granted to the Purchaser an option to purchase and the Purchaser granted the Seller an option to sell commercialisation rights in Retained Markets, exercisable during a prescribed exercise period. The MAPA also set out that the call and put option, if not exercised during the exercise period, would lapse and cease to exist. The Commission further observed that by way of executing BPA, now the Seller wishes to sell and the Purchaser wishes to purchase the commercialisation rights related to Target Products in Retained Markets.
8. Given the limited presence of the GSK entities in the injectable anti-coagulants segment in India, the Commission observed that the Proposed Combination is not likely to raise



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2016/10/441)



Fair Competition
For Greater Good

significant competition concern and accordingly decided that the exact delineation of the relevant market be left open.

9. With regard to the horizontal overlap in the market for injectable anti-coagulants, the Commission noted that the Acquirers do not have overlap at molecular level either in the existing products in respect of target products or the pipeline products. The Commission noted that the market share of the GSK entities in value terms, in the market of injectable anti-coagulants is in the range of [0-5] percent. Further, the Commission observed that the market for injectable anti-coagulants is characterised by presence of many well established players like Sanofi India Limited, Abbott India Limited, Torrent Pharmaceuticals Limited, USV Limited and Lupin Limited having market share, in value terms, in the range of [10-15] percent, [5-10] percent, [5-10] percent, [5-10] percent and [5-10] percent, respectively. Taking into consideration the above factors, the Commission does not find any horizontal overlap in the market for injectable anti-coagulants to raise any appreciable adverse effect on competition.
10. As regards vertical relationships, the Commission observed that pursuant to MAPA, Aspen NDB, which manufactures Fondaparinux and Nandroparine, the Active Pharmaceuticals Ingredients used in the production of Target Products, got engaged in the manufacturing of Target Products and supplied the Target Products to GSK entities for commercialisation in Retained Markets. The Commission also observed that post combination this vertical relationship between the Acquirers and GSK entities will cease to exist.
11. Considering facts on record, details provided in the notice given under sub-section (2) of Section 6 of the Act and assessment on the basis of factors stated in sub-section (4) of Section 20 of the Act, the Commission is of the opinion that the Proposed Combination is not likely to have an appreciable adverse effect on competition in India and therefore, the Commission hereby approves the same under sub-section (1) of Section 31 of the Act.



COMPETITION COMMISSION OF INDIA

(Combination Registration No. C-2016/10/441)



*Fair Competition
For Greater Good*

12. This order shall stand revoked if, at any time, the information provided by the Acquirers is found to be incorrect.
13. The information provided by the Acquirers is confidential at this stage, in terms of and subject to the provisions of Section 57 of the Act.
14. The Secretary is directed to communicate to the Acquirers accordingly.